

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

UL LLC, ) Case No. 24 C 5631  
Plaintiff, )  
v. )  
JOSHUA CALLINGTON, ) Chicago, Illinois  
Defendant. ) May 5, 2025  
1:30 p.m.

TRANSCRIPT OF TELEPHONIC PROCEEDINGS - MOTION  
BEFORE THE HONORABLE ANDREA R. WOOD

APPEARANCES:

For the Plaintiff: LITTLER MENDELSON PC  
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For the Defendant: BEVERLY PLLC  
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PROCEEDINGS REPORTED BY STENOTYPE  
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1 (Proceedings heard in open court:)

2 COURTROOM DEPUTY: Calling case 24 CV 5631, UL LLC  
3 versus Callington. Counsel, you may put your appearances on  
4 the record beginning with plaintiff.

5 MR. GRIFFITH: This is Kevin Griffith for plaintiff  
6 UL.

7 MS. LEVY: This is Emily Levy for plaintiff UL.

8 THE COURT: And for the defendant?

9 MS. COLE: This is Agatha Cole for Mr. Callington.

10 THE COURT: Thank you. And is there anyone else who  
11 wanted to make an appearance today? I know we have an amicus  
12 filer so that brief was not an item really on the agenda for  
13 today, but I don't know if that counsel is on the line and  
14 wants to, nonetheless, make an appearance.

15 (Pause.)

16 THE COURT: As I'm not seeing that they are, then that  
17 is fine. Okay. So the main thing that I wanted to do this  
18 afternoon is to revisit the issue of the interim order that has  
19 been governing the preservation and nondisclosure of the  
20 materials that Mr. Callington allegedly took with him  
21 improperly at the time that he left UL LLC. Particularly now  
22 that I have seen the arguments that are being made in  
23 connection with the anti-SLAPP provision, given the fact  
24 that we still don't have the long-term order in place for the  
25 case, it seemed to me time to address that and to make sure

1 that everyone is on the same page here.

2 I have a couple of questions for the parties. I'd  
3 like to start, though, by first coming back to -- I guess  
4 really defense counsel first to confirm exactly what it is at  
5 this point that you feel you should be able to do that the  
6 proposal from plaintiff's counsel would prevent you from doing.  
7 In particular, as I was reviewing the filings in this case, I  
8 went back through the correspondence attached to the motion  
9 practice as an exhibit and there's an acknowledgment from  
10 defense counsel that if there is a designation of what the  
11 confidential trade secrets are, then a stipulation can be  
12 entered regarding their nondisclosure.

13 So I wanted to start there and get a better  
14 understanding of what that really is. Is that actually a good  
15 faith offer to have a negotiated order governing the disclosure  
16 of material until this litigation gets resolved in its entirety  
17 or is that really more of an objection to the approach that the  
18 plaintiff is taking?

19 So I'll start there with Ms. Cole. And again to focus  
20 on the question that I'm asking, it's really is your position  
21 that you are willing to negotiate some sort of nondisclosure  
22 order that would be in place pending resolution of this case,  
23 you just disagree with the procedure that the plaintiff is  
24 proposing?

25 MS. COLE: That -- that is a good faith offer, your

1 Honor, and, in fact, counsel had one or more meet and confers  
2 for that purpose. However, through those meet and confers, I  
3 became to -- I came to understand that what you all are seeking  
4 is not really to protect their trade secrets but rather to  
5 prevent Mr. Callington from speaking to anyone and the press  
6 and government authorities in particular about what he observed  
7 during his employment with the company. If UL can identify  
8 and, you know, submit a list of the documents that he would  
9 have been exposed to in his employment which they believed  
10 constitute trade secrets and not, you know, all of his  
11 documents which might contain trade secrets but truly identify  
12 the nature of any legally protected trade secret information  
13 that has a material interest and legally protected interest and  
14 preventing from disclosure for competitive purposes, then of  
15 course we would willingly agree to a protective order covering  
16 those materials.

17 THE COURT: And why is it that you believe that the  
18 order that the plaintiff is proposing prevents your client from  
19 talking to third parties about things that he observed as  
20 opposed to actually sharing documents that were taken with him  
21 when he left?

22 MS. COLE: Just as a matter of clarification, we're  
23 referring to the interim document preservation nondisclosure  
24 order that's at Docket Entry No. 17, correct?

25 THE COURT: So taking -- so taking a little bit of a

1 step back, so that was in place. Since then, the plaintiff had  
2 filed a motion for entry of what they're calling a protective  
3 order that would have a procedure for the information that  
4 Mr. Callington took with him to be reproduced back to the  
5 plaintiff so that they can designate things as confidential and  
6 my understanding is that that proposal is intended to take the  
7 place of the interim order which was intended to be interim and  
8 to address the confidentiality issues covering these materials.

9 Mr. Griffith, am I recalling that correctly that the  
10 intent of your proposed protective order is to put a procedure  
11 in place so that you can identify the trade secrets that you're  
12 trying to protect from disclosure?

13 MR. GRIFFITH: Correct, your Honor. And it's not just  
14 trade secrets. It's other confidential commercial information  
15 in both of those types or categories of internal company  
16 information are commonly protected by protective orders during  
17 the discovery in a case like this but that's what we propose.  
18 We propose a traditional protective order -- really the court  
19 model protective order -- with a couple of additions that  
20 address the current situation which is, you know, instead of us  
21 producing documents to him, he already has the documents that  
22 are at issue in the case. They're the evidence in the case --

23 THE COURT: Yeah.

24 MR. GRIFFITH: -- and we just want to be able to  
25 designate them the ones that should be designated as

1 confidential under the protective order and --

2 THE COURT: So going back --

3 MR. GRIFFITH: -- we didn't get a chance to do that.

4 THE COURT: Okay. Let's go back to Ms. Cole then. So  
5 what I'm really focused on is what the order is going to look  
6 like going forward. The plaintiffs have proposed this  
7 protective order which would have a procedure for documents to  
8 be provided back to them so they can designate them as trade  
9 secrets or other things that should be maintained as  
10 confidential and my goal in the first instance -- and I think  
11 we tried to do this at another hearing so I'm going to try  
12 again -- is to identify what the actual disagreement is between  
13 the parties.

14 So what is your objection to their proposal that  
15 includes the draft protective order that was, I guess -- let's  
16 see -- filed in November?

17 MR. GRIFFITH: Document 22-1.

18 THE COURT: Correct. It's Document 22-1. Are you  
19 looking for the document, Ms. Cole?

20 MS. COLE: I -- I am. I think I have it in front of  
21 me and --

22 THE COURT: Okay. I'll give you a minute.

23 MS. COLE: -- this is the --

24 MR. GRIFFITH: It's an attachment to the motion.

25 THE COURT: Because as I understand it, Ms. Cole is

1 not at the moment objecting in principle to the idea that  
2 certain information would be designated as protected pursuant  
3 to a confidentiality order but she wants her client to be able  
4 to use information that wouldn't be properly designated as  
5 confidential and it does seem that there is some disagreement  
6 as to how information gets identified as a trade secret or  
7 something else that requires protection.

8 MS. COLE: So to answer your question, your  
9 Honor -- thank you for that response. I have the -- their  
10 proposed confidentiality order in front of me now at 22-1. And  
11 your question, if I understood it -- and please correct me if I  
12 misconstrue it -- but your question was, you know, what is our  
13 objection to this proposed procedure where Mr. Callington would  
14 produce to UL all of the documents in his possession which they  
15 would subsequently designate as either confidential or trade  
16 secrets and that those would be the documents that  
17 Mr. Callington, you know, may not use or rely on in his -- you  
18 know, for any purpose. Is that -- am I understanding the  
19 question correctly?

20 THE COURT: Well, I don't think it's for any purpose.  
21 I think it's for any purpose other than this litigation because  
22 I believe the plaintiff's position is that they're not trying  
23 to prevent Mr. Callington from using even that confidential  
24 information in connection with this litigation. Plaintiff's  
25 position is they're just concerned about him using it beyond

1 this litigation. In other words, they're not seeking to have  
2 it all returned which is why they're taking the position that  
3 this is not a request or some sort of preliminary injunctive  
4 relief. They're taking the position that this is really just a  
5 matter of discovering material being limited to use in this  
6 litigation.

7 MS. COLE: Understood.

8 MR. GRIFFITH: Correct.

9 MS. COLE: The fact is that these are not discovery  
10 materials. They would certainly be part of what would be  
11 discoverable if this case were to reach the discovery stage but  
12 they are not discovery materials. They are materials that  
13 Mr. Callington in large part are his work product from the time  
14 that he was both an independent contractor and a full-time  
15 employee.

16 Our position is that he has not disclosed any trade  
17 secret information. As far as I can tell from the pleadings  
18 and the documents that Mr. Callington has shared with me, it is  
19 impossible to determine what precisely is the substantive  
20 material that UL is saying gives rise to the DTSA claim.

21 So if their position is, you know, all documents  
22 contain trade secrets to the extent that, you know, they reveal  
23 who our clients are or how certain audits came out, we don't  
24 think that that is a legitimate claim of trade secrets that  
25 gives rise to a legitimate legal interest that can or should be



1     protected at this point.

2             THE COURT:   And so --

3             MS. COLE:   At this point in the litigation --

4             THE COURT:   -- in the complaint, there's a paragraph  
5     where they describe "audit reports, including onsite notes,  
6     audit process and methods, confidential photos taken of the  
7     customers' suppliers' internal facilities, equipment and  
8     operations that are not generally open to or disclosed to the  
9     public," et cetera.   Would you agree that those things would  
10    properly be covered by a protective order?

11            MS. COLE:   We do not.   An audit report can contain  
12    hundreds of pieces of information that are not trade secrets.  
13    In fact, many of these companies that hire UL to certify them  
14    as ESG compliant post these audit reports publicly on their  
15    website or, you know, file them with large investors as  
16    evidence of their so-called compliance with environmental,  
17    social, and governance requirements.   So, no, not all of the  
18    audit reports and all of the information in the audit reports  
19    is a trade secret.

20            Furthermore, to the extent that Mr. Callington wishes  
21    to rely on these documents in other proceedings or in  
22    communication with government authorities, state or federal,  
23    or -- you know, the other day he had a conversation with --  
24    with staffers to a member of Congress and is seeking to  
25    advocate for himself.   He was completely unsure of what he

1 could and could not speak about and so the main issue is just  
2 how incredibly broad this protective order is and the fact that  
3 there's simply no legal basis for it at this point. He has not  
4 done anything in the litigation, or otherwise, that warrants  
5 the imposition of injunctive relief and so it's a very  
6 burdensome restriction on his conduct and speech that has no  
7 basis in law from our perspective. And so the culture --

8 THE COURT: If I can stop you there. What about the  
9 contracts because there's a breach of contract claim in this  
10 case and there are contracts that were attached to the  
11 complaint that appeared to have been signed by Mr. Callington  
12 that do have confidentiality provisions that would seem to go  
13 broader and cover more than just trade secrets. To the extent  
14 this case is also about breach of those confidentiality  
15 provisions and the contracts between Mr. Callington and UL,  
16 wouldn't that also provide a basis for treating some of this  
17 information as confidential?

18 MS. COLE: If -- if UL has a plausible and actionable  
19 claim for breach of contract against Mr. Callington, they  
20 should put up substantial evidence of that such on the motion  
21 to dismiss at which point we would enter discovery and our  
22 conversation about what is and is not confidential would be a  
23 more comprehensive and two-way conversation. At this juncture,  
24 you know, I have never heard of a breach of contract case where  
25 the party is entitled to specific performance of a

1 confidentiality or nondisclosure agreement right out of the  
2 gate. Moreover, the way to enforce an NDA or confidentiality  
3 agreement is through litigation and contract damage. They  
4 aren't alleging any damage that's found in contract. All of  
5 their damages are reputational in nature as if this were, you  
6 know, a libel case but they cannot bring a libel claim because  
7 everything that Mr. Callington has said is true.

8 THE COURT: So going back to my original question,  
9 Ms. Cole, it sounds like in fact the actual answer is no, that  
10 you don't agree that there should be any order in place that  
11 governs the identification and designation of material that's  
12 going to be treated as confidential at this stage, is that  
13 correct --

14 MS. COLE: At this stage --

15 THE COURT: -- and then I'll let you finish the  
16 procedural point you were going to make?

17 MS. COLE: At this stage, we do not believe that it  
18 would be appropriate for an order to be entered enforcing the  
19 confidentiality, a document. Now, on the other hand, and as I  
20 previously stated to my friend on the other side, if UL is  
21 claiming to have legitimate interests in specific trade secrets  
22 that it wants to make sure are not inadvertently disclosed in  
23 the course of speaking with government entities or anyone else,  
24 then if they can identify those with sufficient specificity  
25 that it doesn't cover literally everything that Mr. Callington

1 ever did for the company, then of course we would willingly  
2 enter and agree to that sort of a protective order. But  
3 insofar as that they're claiming the right to a protective  
4 order to cover anything which they are seeking to designate as  
5 confidential, we do -- we would not agree to that.

6 THE COURT: I've heard a lot from Ms. Cole so I'll  
7 give Mr. Griffith and Ms. Levy an opportunity to respond and  
8 then I'll let the parties know my thoughts on where things  
9 stand.

10 MR. GRIFFITH: Thank you, your Honor. A couple  
11 things. This is really just to regulate the litigation of this  
12 particular case that ultimately delayed the discovery and the  
13 protection that Ms. Cole is speaking to can actually be  
14 resolved by what we proposed. Mr. Callington possesses, we  
15 believe -- and hopefully he's abided by the order, I have no  
16 reason to think he hasn't at this point -- documents that were  
17 taken outside of UL and (audio interruption) contain trade  
18 secret information as defined in the very much broader  
19 definition than we think that (audio interruption) argues about  
20 or asserts and then it also contains internal confidential  
21 business information (audio interruption) contracting parties.

22 COURT REPORTER: Judge -- Excuse me. Excuse me.

23 THE COURT: Yeah. Is that Laura?

24 COURT REPORTER: Yes.

25 THE COURT: Are you having difficulty hearing him?

1 COURT REPORTER: I am. He's cutting in and out so I'm  
2 not sure if his connection is real good.

3 THE COURT: Yes. Mr. Griffith, so you had a couple of  
4 breaks as you were speaking so if -- let's try again --

5 MR. GRIFFITH: Okay.

6 THE COURT: -- and if there's anything that you can do  
7 to kind of firm up your connection, that would be helpful.

8 MR. GRIFFITH: Can you hear me better now?

9 THE COURT: So far so good.

10 MR. GRIFFITH: All right. Let me get to the point.  
11 What we proposed is asking Mr. Callington to produce to us  
12 through Ms. Cole copies of the documents that he has that are  
13 UL documents, documents that he took by email to his own email  
14 account and into -- also into a Dropbox and perhaps another way  
15 documents that he's got in his possession and we're asking for  
16 copies of those. He keeps what's in his possession. It's the  
17 evidence in the case but we want copies of what he's got and  
18 then we look at those and we say what warrants confidential  
19 information designation under the protective order and what  
20 doesn't and then we say to Ms. Cole this is what we want  
21 designated as confidential under the protective order. She  
22 either agrees or she doesn't. And if she doesn't, we come back  
23 to the Court and say these particular documents we have  
24 disagreement about, we're going to ask the Court to weigh in  
25 whether they should have a confidential designation under the

1 protective order to be used only in this case. The other part  
2 of the protective order, it allows him to go to a government  
3 agency. It allows him to speak to the press. It just doesn't  
4 allow him to take documents that are -- and give those to the  
5 press and I believe he could give them to the agencies. You  
6 know, then -- that have been designated confidential but  
7 nothing's been designated yet.

8 THE COURT: And to what extent --

9 MR. GRIFFITH: We're just trying to get ahold of the  
10 documents.

11 THE COURT: To what extent -- to what extent are you  
12 concerned about him speaking to the press or somebody other  
13 than a government agency and the information that he  
14 communicates is influenced by something he saw in one of the  
15 documents because that's the difficult thing with these sorts  
16 of orders is that if he's talking and answering questions, he  
17 would have to somehow distinguish between what he learned  
18 independent of confidential documents versus what he may know  
19 based on looking at confidential documents. And so what is  
20 your position on how he should go about doing that?

21 MR. GRIFFITH: Great question; and that is a  
22 challenge. If we go to the process that we proposed, let us  
23 look at what he's got, let us designate it, then that's going  
24 to give clarification to what he can speak to. And again,  
25 Ms. Cole is going to have an opportunity to say no, I disagree

1     that you can mark that confidential under this protective  
2     order.

3             THE COURT:   What evidence do you have that he actually  
4     took these documents in violation of some duty that he has to  
5     your client?

6             MR. GRIFFITH:   I think there's significant evidence of  
7     that and it's laid out in the complaint.

8             THE COURT:   Okay.   So you have -- but you haven't  
9     submitted any affidavits, the complaint is not verified so  
10    what -- if I were to ask you to submit affidavits or  
11    declarations, what would they look like?

12            MR. GRIFFITH:   They would look like that forensic  
13    audit or forensic investigation of what he was doing in his  
14    computer reflects that he took or transferred to his own  
15    personal email account, transferred to an iCloud like 20,000  
16    emails and 76,000 UL files.   And he was doing it -- he was  
17    doing the emailing at work and these are work-related emails  
18    and he just had it on a BC, he had it on a blind copy going to  
19    his own email account unknown to the company.   That's what you  
20    would see.

21            THE COURT:   Okay.   So here's --

22            MR. GRIFFITH:   I guess I should say --

23            THE COURT:   Go ahead.   Finish -- finish your response.

24            MR. GRIFFITH:   I should say that he was asked  
25    repeatedly to return, return, return.   He hasn't done that and

1 so we just want an accounting, in effect, of what does he got  
2 so we can get it and mark it confidential before he wants to  
3 give it out to whomever he wants to give it out to, which we  
4 don't think would be appropriate. Government agencies, yes.  
5 If he has a claim of his own, he can use it in this litigation,  
6 he can use it with a government agency. But the idea of this  
7 going to the press with these internal documents, we think that  
8 violates his contract, we think it violates trade secret laws,  
9 we think it's a problem for him.

10 THE COURT: Okay. Let me go back to Ms. Cole for a  
11 moment. What is your objection, if any, to having an expedited  
12 process for the parties to review the information that we're  
13 talking about and have any disputes about what's actually  
14 confidential or trade secret determined by the Court on an  
15 expedited basis?

16 MS. COLE: The first objection is that there's no  
17 basis, no legal basis for seeking this relief under either  
18 common law contract -- law of contracts or the DTSA  
19 (indiscernible).

20 The second objection is that our position for us in  
21 the anti-SLAPP motion is that the purpose of this lawsuit is to  
22 harass and intimidate Mr. Callington and by requiring one-way  
23 discovery to allow UL to, you know, assess exactly what  
24 information he has in his possession before this case gets to  
25 the discovery stage seeing that, you know, they in our opinion



1 have not laid out any kind of a valid claim really shocks the  
2 conscience I think. It -- as a matter of law, as a matter of  
3 due process, I mean, that's burdening an individual litigant  
4 and former employee with this kind of an obligation when UL  
5 is -- should be aware of anything and everything that  
6 Mr. Callington knew or learned about the company and his client  
7 during his employment is patently unfair. You know, the notion  
8 that he should spend thousands of dollars on a purportedly  
9 simple one-way discovery procedure at the pleading stage in a  
10 case that deserves a tremendous amount of scrutiny as a SLAPP,  
11 that's our -- that's our number-one objection. Secondly, I  
12 also think that UL is using this as, sort of, a fishing  
13 expedition to try and figure out exactly, you know, what  
14 Mr. Callington knows and where to, you know, assess how much  
15 exposure they have here.

16 THE COURT: Okay. So a couple of things for the  
17 parties here: Mr. Griffith, over the course of the case since  
18 that Ms. Cole has come in and raised these concerns, I've asked  
19 a few times for authority to be presented for why this is a  
20 discovery issue that should be handled pursuant to Rule 26(c)  
21 of the Federal Rules of Civil Procedure, which is how I  
22 understand you to be seeking to go forward on this issue, and  
23 that's, of course, the rule that the model confidentiality  
24 order in our district is based off of. Rule 26(c) is a  
25 discovery rule. Our model confidentiality order is a

1 confidentiality order premised on the ability to enter  
2 protective orders governing discovery under Rule 26(c) but  
3 this, at this point, does not seem to be a discovery dispute  
4 because this is not an issue of how to protect information that  
5 is being produced or obtained through the discovery process.  
6 And if you look at the very first line of Rule 26(c), it talks  
7 about this -- 26(c)(1), it talks about "a party or a person  
8 from whom discovery is sought may move for a protective order."  
9 This dispute is not about discovery. This dispute is about  
10 information that the plaintiff believes was improperly taken  
11 before there was even a lawsuit. It's misappropriation. It's  
12 misuse. That is what is being alleged here.

13           So it is very unclear to me what the legal basis is to  
14 treat this as a straightforward motion under Rule 26(c) as the  
15 plaintiff seems to be suggesting. And the proposed  
16 confidentiality order, which I went back and looked at again,  
17 concerns production of discovery and includes a provision that  
18 would treat the plaintiff here as a producing party within the  
19 meaning of that order and presumably Rule 26(c). It's  
20 difficult for me to see how that's the case because this isn't  
21 a discovery issue at this point.

22           So I do think procedurally this is not a great fit for  
23 Rule 26(c) and I do have concerns that what the plaintiff is  
24 trying to do here is to use the discovery standard, which is a  
25 good cause standard for limiting the conduct of the other side,

1 in place of the Rule 65 standard which does require some  
2 evidence and a showing of a likelihood of success on the  
3 merits.

4 That said, it certainly seems to me that if there were  
5 a request for some sort of restraint, a preliminary injunction,  
6 under rule twenty -- under Rule 65 that would prevent the  
7 dissemination of the information taken by Mr. Callington in  
8 violation of the Trade Secrets Act and/or his contractual  
9 duties to UL, you'd probably be able to make out a showing that  
10 would support such an order if you presented a declaration or a  
11 witness that said the things that you claim that the witnesses  
12 would say.

13 So it is a bit perplexing to me that you are  
14 proceeding in this manner other than, I suppose, wanting to be  
15 cautious about being accused of violating somebody's First  
16 Amendment rights. But it does seem to me that the proper way  
17 to proceed here is for the plaintiff to put forward a showing  
18 of a likelihood of success on the merits, irreparable harm,  
19 et cetera, the things that we look at under Rule 65 and ask for  
20 an injunction that would prevent the dissemination of any of  
21 the information that was allegedly taken by Mr. Callington.  
22 And frankly, I haven't heard any suggestion from defense  
23 counsel that he didn't actually take the information. I have  
24 heard the suggestion that they don't think it's confidential or  
25 they don't think it's a trade secret, but I have yet to hear he

1 didn't actually take the documents. So it seems to me that in  
2 lights of all of that, if you have, you know, a witness who  
3 would, you know, state the things that you say that they would  
4 state during testimony -- whether a written declaration or live  
5 testimony -- that you probably would be able to make out a  
6 likelihood of success on the merits so it is a bit perplexing  
7 to me why you are pushing this protective order motion when I  
8 have not yet seen any case law interpreting Rule 26(c) to  
9 provide for this relief that you're seeking.

10 Do you have some actual authority for proceeding in  
11 this manner, Mr. Griffith?

12 MR. GRIFFITH: I don't have a case. I think the  
13 provisions of Rule 26, 26(c)(1)(B) and (G) give the Court the  
14 discretion to manage the discovery in the case how the Court  
15 deems fit and that's really what the basis is for this  
16 particular request to have the uniform protective order --

17 THE COURT: So, Mr. Griffith, I have to stop you there  
18 because you keep talking about discretion to manage discovery.  
19 In what way is this a discovery dispute? You're not seeking  
20 information from them in the discovery at this point.

21 MR. GRIFFITH: It's really just -- it's just an effort  
22 to get a standard protective order in place in a case that's  
23 going to have a protective order and the idea was, well, this  
24 is a little different. It's not that we have documents to  
25 produce that we want to be marked confidential. It's he's

1 already got the documents that we -- a lot of which I'm sure we  
2 will have it marked confidential. So it is -- it is a twist on  
3 Rule 26 and I understand what the Court is saying in response  
4 to that. And if we have to --

5 THE COURT: Is there any reason -- if I entered an  
6 order and said in order to keep this restraint in place on  
7 their ability to further use the information that you would  
8 have to make some sort of evidentiary showing that you can  
9 satisfy the requirements of Rule 65, could you do that?

10 MR. GRIFFITH: I would rather do it this way, your  
11 Honor, given the -- our discussion today and where you seem to  
12 be on this particular issue, which I fully understand. I'd  
13 like to keep the interim order in place -- I would like to keep  
14 the interim order in place until we can get a motion for a  
15 preliminary injunction on file --

16 THE COURT: Okay. So --

17 MR. GRIFFITH: -- and go through that process.

18 THE COURT: -- that goes to my question. So you are  
19 prepared that you could present a motion for a preliminary  
20 injunction and make that showing?

21 MR. GRIFFITH: Yes, your Honor.

22 THE COURT: Okay. It does seem to me that while, yes,  
23 there probably will be a protective order in place in this case  
24 to govern discovery -- I think there should be in a case like  
25 this -- that the appropriate thing to do is to set a schedule

1 for a preliminary injunction hearing that can be narrowly  
2 focused on the relief of whether or not Mr. Callington is able  
3 to disseminate this information. Then we have to say,  
4 Ms. Cole, if -- if this is not something that is going to be a  
5 cooperative effort, that means there are going to be findings,  
6 there are going to be potentially findings that your client  
7 violated the federal or the state Trade Secrets Act or  
8 potentially going to be a finding with respect to a breach of  
9 his nondisclosure obligations or the confidentiality  
10 requirements of his employment agreement and it may be a  
11 broader protection than what would otherwise be the case  
12 pursuant to an agreed procedure, but if the parties are  
13 completely at odds -- and it seems that you are -- then I think  
14 it may be unavoidable to just get some of these findings in  
15 place and we'll go forward and treat this as a Rule 65 issue.

16 (Pause.)

17 MS. COLE: Your Honor, that would be fine because we  
18 are confident that this lawsuit has no merit. That being said,  
19 it's challenging to understand why we would be going into a  
20 preliminary injunction proceeding at this stage when, you know,  
21 counsel could have filed for a preliminary injunction at any  
22 earlier stage in the proceeding. And so if you are directing  
23 UL to make a showing of, you know, likelihood of success on the  
24 merits, I hope that, you know, we can take care of the  
25 preliminary injunctive relief and the motion to dismiss and

1 anti-SLAPP arguments, you know, all in one proceeding since,  
2 after all, the main question is can they prevail on the merit  
3 on allegations that -- that have merit.

4 So I guess my only concern is that this will draw out  
5 into another, you know, three to six months over a preliminary  
6 injunction. Meanwhile, we're still at the pleading stage and  
7 my client is still being dragged into court and have this kind  
8 of hanging over his head and we understand --

9 THE COURT: Well, I don't know why it would be three  
10 to six months. A preliminary injunction proceeding happens  
11 quickly so I --

12 MS. COLE: Right.

13 THE COURT: -- would think this would be something  
14 within just a few weeks if that --

15 MS. COLE: Okay.

16 THE COURT: -- first of all. Second of all, you can't  
17 have your cake and eat it too, Ms. Cole. Either the interim  
18 order remains in place or we move forward with a preliminary  
19 injunction proceeding which happens, generally speaking, before  
20 you get through, you know, full litigation of the case. That's  
21 the whole point of preliminary injunctive relief so I guess I'm  
22 a bit confused by your suggestion that this should be put off.  
23 If it's going to be put off, then I'll keep the interim order  
24 in place.

25 MS. COLE: I do not mean to say that it should be put

1 off. Rather, the opposite is what I am trying to argue which  
2 is that we do not want this to put off the revolution of the --  
3 of the merits in any way. And, you know, to the extent that  
4 the Court isn't inclined to decide the protective order I might  
5 add and treated as a preliminary injunction and hear evidence,  
6 we're fine with that. That's fine.

7 THE COURT: Is your concern --

8 MS. COLE: The only --

9 THE COURT. -- that your defense to this case would be  
10 the same as your anti-SLAPP arguments, is that the objection  
11 that you're concerned that the defense that you would raise to  
12 a preliminary injunction proceeding would be the same as the  
13 anti-SLAPP issue and therefore there's not really a way to do  
14 one prior to the other?

15 MS. COLE: Well, it's not necessarily an objection.  
16 It's just a question of efficiency. But yes, I would state it  
17 slightly differently but the answer being yes.

18 MR. GRIFFITH: And I would just -- if I could, your  
19 Honor, and if I could just interject, you know, what we  
20 proposed we think was really practical and a way to manage the  
21 situation where this gentleman possesses documents that he  
22 shouldn't possess and we thought we could do it through this  
23 order and do it in a logical reasonable way.

24 THE COURT: Mr. Griffith, I don't disagree with you  
25 that this would be a faster proceeding. The difficulty here is



1 you are asserting he possesses these documents he should not  
2 possess. You haven't offered any evidence here and proof that  
3 that's the case. You've made allegations in your complaint,  
4 but the point of Rule 65 is that you have to put forward some  
5 evidence and, as I understand it, Ms. Cole is challenging the  
6 evidentiary basis of your claim that this is actually stuff  
7 that he improperly took. She's not agreeing with that.

8 So while you are saying the problem is he possesses  
9 stuff that he wasn't allowed to possess, I don't think that  
10 that is being conceded here by the defense. Am I missing  
11 something, Ms. Cole?

12 MS. COLE: No. That's -- I believe that's a  
13 correct --

14 MR. GRIFFITH: And I thought that --

15 THE COURT: Yes.

16 MR. GRIFFITH: -- by what UL has proposed, we could  
17 address that issue in the normal course of litigation but first  
18 securing the, you know, some control over if -- you know, he  
19 possesses documents and I don't think anybody disputes that.  
20 The question is what's the legal effect of that. And we can  
21 certainly litigate that in the normal course after the ruling  
22 on the motion -- on the anti-SLAPP motion, et cetera, but in  
23 the interim can we have control over the documents, everybody.  
24 It ultimately gives him clarification on what he can talk about  
25 that he wants to add. Instead, we can jump into a preliminary

1 injunction order which is going to be very expensive for  
2 everybody and it's going to be very time-intensive.

3           So that's all I wanted to say is that we'll go down  
4 that path if that's the direction the Court indicates we need  
5 to go down but I'm really going back to Agatha saying, you  
6 know, I'll go down that path which is going to cost everybody a  
7 lot more time and money than what's really proposed on the  
8 table right now, which is just a way of trying to control the  
9 documents that everybody knows he has and that he -- that would  
10 give him direction on what he can use and not use if we're able  
11 to designate.

12           MS. COLE: Your Honor, respectfully, you know,  
13 Mr. Callington is not interested in clarification on, you know,  
14 what he can talk about. He is represented by counsel and the  
15 only obstacle to determining what he can and cannot talk about  
16 in terms of his, you know, default legal right is this  
17 protective order -- and in particular, Paragraph 6 of the  
18 protective order -- as well as the lack of any kind of a  
19 defining scope of material which UL believes he should not be  
20 allowed to speak about. The default should be that any person  
21 can speak about whatever they want to whomever they want unless  
22 there is a legally cognizable nondisclosure obligation or  
23 something of that nature. But in any event, we would be  
24 inclined to agree with your proposal that, you know, if it is a  
25 preliminary injunction that they seek, then that should be how

1 we proceed.

2 THE COURT: So the briefing on the motion to strike is  
3 complete with the exception of the amicus submission. There is  
4 a request that's been made for oral argument on the motion to  
5 strike which I did take under advisement so perhaps the thing  
6 to do here is to get this request for preliminary relief which  
7 can be narrowly tailored. This is not seeking a preliminary  
8 injunction that would be the full relief that might be sought  
9 at the end of this case. This is a focused request, as I  
10 understand it, to require Mr. Callington to disclose what he  
11 has so that things can be designated as confidential and  
12 prevent any further dissemination.

13 Along those lines, maybe we can get this on the same  
14 track as a decision on the anti-SLAPP motion since it does  
15 appear that the main defense here is that this is a harassing  
16 case and not a good faith case. That appears to be the  
17 allegation that's being made by the defense.

18 So with the other motion fully briefed, perhaps what  
19 we can do is have an abbreviated preliminary injunction  
20 proceeding because again this is -- this is not wide-ranging  
21 relief or a motion seeking that relief and supported with  
22 appropriate declarations can be filed in short order. Let's  
23 say within the next week or two. There can be a response filed  
24 to that motion on behalf of defendant Callington and then I  
25 have oral argument on all of those issues at a single hearing.

1 And when I say "all of those issues," I mean the anti-SLAPP  
2 issues as well as the focused preliminary injunction issue at  
3 the same time in order to streamline the proceedings.

4 If I were to proceed in that manner, Mr. Griffin --  
5 Mr. Griffith, how soon would you be able to file a motion that  
6 laid out the basis of which you are seeking to have a court  
7 order put in place that would require the confidential  
8 information to be produced for designation as a process for  
9 limiting its dissemination and Mr. Callington's ability to  
10 share that information publicly, is that a motion that you can  
11 prepare in 14 days?

12 MR. GRIFFITH: I can -- I think we can prepare and  
13 file it by May 27th, your Honor.

14 THE COURT: May 27th.

15 MR. GRIFFITH: Or -- we have our large client  
16 conference this week in Arizona and I'm going to be out the  
17 rest of this week.

18 (Pause.)

19 MR. GRIFFITH: Oh, I'm sorry. I jumped ahead. May  
20 20th or the 21st.

21 THE COURT: Oh, okay. So that is just a couple of  
22 weeks from there.

23 MR. GRIFFITH: Correct. Correct.

24 THE COURT: Okay. Hold on. Give me just one moment.

25 (Pause.)

1           THE COURT: Okay. If I were to receive any such  
2 motion by May 20th, would the defense be able to respond 14  
3 days later?

4           MS. COLE: Yes, your Honor.

5           THE COURT: So that would be June 3rd?

6           MS. COLE: Yes.

7           THE COURT: And then I believe what I could do,  
8 because I have some space that's open due to my schedule, is I  
9 could set an in-court hearing for oral argument but I would not  
10 be seeking a reply brief because instead I would have oral  
11 argument that could address the anti-SLAPP motion as well as  
12 this issue regarding the treatment of the information that was  
13 allegedly taken. I can probably do that on June 17th as an  
14 in-person hearing if the parties are available and we could do  
15 that at, say, 11:00 a.m. on June 17th.

16           MR. GRIFFITH: If you can make that June 18th. Yeah,  
17 I've got a hearing in Cleveland right in the middle of that  
18 day.

19           THE COURT: So you would be able to do 11:00 a.m. on  
20 June 18th?

21           MR. GRIFFITH: Correct, your Honor.

22           THE COURT: Ms. Cole?

23           MS. COLE: That week, my partner is at a conference in  
24 Seattle and so I have primary childcare duties. Is there any  
25 way that we could do it telephonically instead of in person?

1           THE COURT: For oral argument, I would strongly prefer  
2 to do it in person because this would be a more extensive  
3 argument.

4           MS. COLE: Okay.

5           THE COURT: I would also be able to do it the  
6 following week, it's a week further, for the parties to get a  
7 resolution of this matter but --

8           MS. COLE: Understood. We will -- I will find a way  
9 to make that date work, the 18th or the 19th.

10          THE COURT: And I could also do it the 24th or, I  
11 suppose, Monday the 23rd of June which is just a few days  
12 later. Would that work better with your schedule, Ms. Cole?

13          MS. COLE: I think that the 18th or 19th would be -- I  
14 will figure out a way to make it work. I just don't want to  
15 push this out any further --

16          THE COURT: Well, why don't we do this --

17          MS. COLE: -- and so I can make it work.

18          THE COURT: -- I'll set it for the 18th at 11:00 a.m.  
19 I believe I could do the 18th at 11:00 a.m. and we could do it  
20 as a video conference.

21          MS. COLE: Okay.

22          THE COURT: It's not my preference for substantive  
23 arguments but for this matter since I'm not anticipating that  
24 it will require a lot of testimony -- in fact, I don't know  
25 that I'm expecting it to require any testimony at this point --

1 we can do it -- we can plan to do it by video conference on  
2 June 18th at 11:00 a.m.

3 MS. COLE: That would be much more convenient for  
4 Mr. Callington and his counsel and we appreciate the  
5 accommodation.

6 THE COURT: And will Mr. Callington be available to  
7 appear for that hearing, that video conference?

8 MS. COLE: Of course.

9 THE COURT: Would that also work for you,  
10 Mr. Griffith?

11 MR. GRIFFITH: Yes, your Honor.

12 THE COURT: Okay.

13 MR. GRIFFITH: Your Honor, I have to check with my --  
14 did you want the client representatives to be there?

15 THE COURT: So it may be beneficial to have a client  
16 representative. So, look, this is -- and I appreciate this is  
17 again an awkward fit procedurally for what you are hoping to do  
18 with respect to this information and whether it's going to be  
19 restricted in its use or not restricted. So if there is a  
20 person who is going to provide a declaration and it may be  
21 useful for that person to be present to answer questions about  
22 the declaration, that may be useful to have such a person  
23 present. I don't know exactly what you're going to put forward  
24 to support the claims here. But again, one of the things that  
25 makes this request a bit unusual is that there doesn't seem to

1 be a dispute that things were taken by Mr. Callington when he  
2 left. The dispute here seems to be more about legal issues  
3 regarding whether or not taking such information was a breach  
4 of any duty that should, you know, form the basis for a legal  
5 action. And so it may be that this comes down to legal  
6 arguments but it would be very helpful for me to have an  
7 evidentiary basis to know what it is -- not just allegations,  
8 but some evidentiary support for why it is that the plaintiff  
9 here believes it's going to be able to prevail on its claims  
10 that trade secrets were taken in violation of federal and state  
11 law and that duties under contract and common law breach of  
12 fiduciary duty were breached so hopefully that answers your  
13 question.

14 MS. COLE: Okay.

15 MR. GRIFFITH: It does.

16 THE COURT: Okay. Hopefully we'll be able -- that  
17 will enable us to expedite getting a ruling on the anti-SLAPP  
18 issue. I know that there's been some back and forth on how to  
19 address that but I think this will tee up that issue as well.

20 Okay. In the meantime, I still have a reply date on  
21 the issue of the amicus brief. I see that there was a motion  
22 filed earlier today by plaintiff's counsel in opposition to the  
23 amicus so I'll see if there's a reply that's filed and then I  
24 should have everything that I need on that issue to move  
25 forward. I will also --



1 MS. COLE: Your Honor --

2 THE COURT: Yes, Ms. Cole?

3 MS. COLE: Your Honor, I'm sorry. Just a quick point  
4 of clarification on the protective order. So in the interim, I  
5 imagine that Document Number 17 of the protective order that is  
6 currently in place will remain in place; is that correct?

7 THE COURT: That is my intention. I think it is  
8 appropriate for some things to remain in place until this  
9 preliminary injunction hearing can take place --

10 MS. COLE: Understood.

11 THE COURT: -- so it can be accelerated or not. It is  
12 not my intent for Mr. Callington to be in any sort of a Bocce  
13 situation especially since I don't hear plaintiff's counsel  
14 saying that they want to prevent him from exercising his First  
15 Amendment rights or cooperating with law enforcement or  
16 government inquiries.

17 MS. COLE: Understood. And -- and we understand the  
18 Court's reasons for that. I would just ask UL if it would have  
19 any objection to striking Paragraph 6 from the interim  
20 protective order. During that time, that provision has been  
21 burdensome and difficult to comply with. And that is the  
22 provision saying that if Mr. Callington receives a subpoena or  
23 other request from federal, state, or local law enforcement or  
24 government agency, then he is to promptly notify UL's counsel  
25 of record. That provision is -- it's just not workable, even

1 in the short-term have been very challenging and I don't think  
2 that that provision goes to any of the concerns or issues  
3 discussed today.

4 THE COURT: Is the concern about him providing  
5 documents or providing -- just give me the page -- in other  
6 words, his speaking with a government agency or him providing  
7 documents to a government agency?

8 MS. COLE: The concern is that the order directs -- it  
9 imposes an obligation on Mr. Callington to inform UL of  
10 his -- if he receives a subpoena or a request for information  
11 from a governmental authority. In many types of instances,  
12 disclosing to a target of an investigation in the instance of a  
13 subpoena or a request for information would put him in a  
14 position where he would be violating other statutory provisions  
15 such as a seal provision, for example.

16 MR. GRIFFITH: I mean, they are the -- I think you  
17 know the obvious intent of that language is it gives UL notice  
18 that documentation that was internal to UL that we assert is in  
19 Mr. Callington's possession will be turned over somewhere  
20 without UL having a chance to try to protect it if it's  
21 confidential or trade secret. I don't know why that's  
22 burdensome to him. I mean, that notice would come from you;  
23 not from us.

24 THE COURT: So, Mr. Griffith, hypothetically if your  
25 client were engaged in illegal activity and were the subject of

1 a law enforcement investigation, would you expect defense  
2 counsel to notify you that they had been approached to provide  
3 information as part of an ongoing confidential law enforcement  
4 investigation of your client? And if they didn't, would you  
5 consider that to be a breach?

6 MR. GRIFFITH: Not if it was a criminal proceeding,  
7 your Honor. But in this case if it is a situation where it  
8 is -- he's been subpoenaed to provide documentation that he may  
9 have obtained from our client that was internal documentation,  
10 not out in the public, giving our client a chance to protect  
11 that from disclosure at least get it marked confidential so  
12 that it doesn't -- if it gets in the federal agency or a state  
13 agency, it's not subject to a FOIA request that a competitor  
14 can get so it's really just more of a procedural device to  
15 add -- to give the company protection over its own information.

16 THE COURT: Any response from Ms. Cole? Is that the  
17 type of thing that you're concerned about?

18 MS. COLE: The type of thing that we are concerned  
19 about is that if a government agency asks Mr. Callington for  
20 documents in his possession, we would -- Mr. Callington should  
21 be entitled to comply with that request without fear of  
22 violating a court protective order. And then to the extent  
23 that -- I will leave it at that. Yes.

24 MR. GRIFFITH: And that's -- that's just a notice  
25 provision.

1 MS. COLE: But there's no basis for imposing a legal  
2 obligation on Mr. Callington to provide UL notice if he is  
3 cooperating with government authorities.

4 MR. GRIFFITH: Yeah. Our position would be if  
5 he's -- if he is disclosing documentation that he took  
6 improperly -- illegally from the company, it seems to us that  
7 the company ought to at least have notice of where it's going  
8 so it has a chance to try to protect the confidentiality of it.

9 THE COURT: Okay. I understand the issue, I believe,  
10 and you believe that this is a concern, Ms. Cole, that is ripe  
11 for consideration before the hearing date that I just asked  
12 them -- I think -- what was that, June 18th? In other words,  
13 you either have received or you're expecting to receive a  
14 request between now and June 18th that you think will pose an  
15 issue if this order remains in place?

16 MS. COLE: I wouldn't necessarily put it that way but  
17 I will say that that provision in particular has already  
18 burdened Mr. Callington's conduct vis-a-vis government agencies  
19 and so we are seeking to have that restriction lifted because  
20 there is no basis for it and it would not harm any cognizable  
21 legal interest that if Mr. Callington were to disclose  
22 something to a, you know, federal or state government agency,  
23 he should be entitled to do so. I think there are other  
24 protections in place for companies like UL to protect its trade  
25 secret from discoverability through FOIA requests. That's many

1 levels of attenuation for the level of burden on his conduct  
2 that is being imposed by such a notice provision.

3 THE COURT: And so you are referring to situations  
4 where there has been a formal request for information either  
5 pursuant to subpoena or otherwise from a federal, state, or,  
6 local law enforcement or government agency; is that correct?

7 MS. COLE: I'm referring to that situation and I am  
8 also referring to a situation where the various other types of  
9 situations in which Mr. Callington wishes to provide  
10 information to a government authority, not a private party, not  
11 the press, a government authority that is --

12 THE COURT: So if he wants to affirmatively disclose  
13 it, this is not a situation where he is being contacted to  
14 provide it. He wants to initiate government interest in the  
15 information that he has or at least be able to do so; is that  
16 correct?

17 MS. COLE: That would be another one of several ways  
18 in which the government -- in which he should be entitled to  
19 provide information to authority. There are many other -- I  
20 guess that's the problem with this language. It is  
21 tremendously burdensome. I don't see how or why UL should be  
22 entitled to and put any kind of an obligation vis-a-vis  
23 Mr. Callington's communications and contact with federal and  
24 state government authorities. There's no basis for it.

25 MR. GRIFFITH: Let's be clear here. First of all, I

1 did receive the subpoena to provide documents that are UL  
2 documents and we did not receive notice of that but that  
3 happened.

4 MS. COLE: I'm not here to be examined by UL's counsel  
5 but if your Honor has a question for me, I would be happy to  
6 answer it.

7 THE COURT: Okay. So I'm not going to go too far down  
8 this road. What I have in front of me is a request from  
9 defense counsel that Mr. Callington be relieved from the  
10 obligations in Paragraph 6 so that he can freely disclose  
11 information to federal, state, or law enforcement and I also  
12 have the opposition to that from the plaintiff's counsel  
13 basically saying that they want to be able to control  
14 information that they believe was illegally obtained. I will  
15 take that under advisement. It does not seem that there is  
16 going to be any further productive arguments on that issue  
17 during today's hearing and I may issue an order clarifying  
18 Paragraph 6.

19 What I would say is that to the extent this is an  
20 issue that needs to be addressed prior to the 18th, we can  
21 accelerate the schedule in connection with the hearing on the  
22 preliminary injunction that would apply to the dissemination of  
23 the information. Right now, I've given plaintiff's counsel two  
24 weeks to file a motion. I've given defense counsel two weeks  
25 to respond to the motion, and then I've set a hearing two weeks

1 after that. If we need to accelerate this process, we can do  
2 that. We can move this up so that there is, you know, one week  
3 and one week for a response, a motion and a response and then  
4 we'll try to set a hearing before then.

5 So the appropriate way to deal with this request would  
6 be through motion practice. We can do it on an expedited  
7 basis. Right now, I have a schedule in place. If there is an  
8 immediate concern where one side is worried about doing  
9 something that's going to violate this order or needing  
10 additional protection beyond what's in the order, you can file  
11 an expedited motion for relief but I need something more  
12 concrete than vague, general statements about something that  
13 may or may not happen.

14 If you're concerned, Ms. Cole, file a motion, ask for  
15 leave to have *ex parte* with me or to be able to file something  
16 under seal that reveals, you know, what your issue is. But  
17 right now, all I can take from what you're saying is that your  
18 client wants to be able to share freely documents and  
19 information that he has in his possession with government  
20 agencies even if they aren't contacting him first. I will take  
21 that under advisement. I may go ahead and issue a modification  
22 to this order. But if there is a specific concern, something  
23 that he wants to do and he's not sure if he's able to do it, I  
24 would encourage you to file a motion. And if you need to file  
25 it and seek *ex parte* relief, you can seek *ex parte* relief if

1 the concern is you don't want to violate some sort of  
2 obligation under another statute but speaking in these vague  
3 terms doesn't give me the information I need in order to make a  
4 ruling on a specific situation.

5 MS. COLE: Understood, your Honor. Thank you.

6 THE COURT: And again, I -- if what you need is faster  
7 relief, ask for a more expedited briefing schedule. We'll set  
8 something. I wanted to give the parties a fair amount of time  
9 to make your best arguments. But if you need this issue to be  
10 teed up more quickly, we can shorten the schedule.

11 For now, the hearing is set for the 18th at 11:00 a.m.  
12 It will be set as a video hearing. That will also serve as the  
13 next status hearing in this case and my intent is to resolve  
14 the anti-SLAPP issue to the extent possible at the same time as  
15 the document information distribution issue. The interim order  
16 will remain in place. I'm taking under advisement the request  
17 to modify Paragraph 6. Okay. Thank you all for your time this  
18 afternoon.

19 MR. GRIFFITH: Thank you, your Honor.

20 MS. COLE: Thank you, your Honor.

21 (Concluded at 2:50 p.m.)

22 \* \* \* \* \*

23 I certify that the foregoing is a correct transcript  
24 from the record of proceedings in the above-entitled matter.

24 /s/Laura LaCien  
25 Laura LaCien, CSR, RMR, CRR  
Official Court Reporter

May 30, 2025  
Date